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Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of)

Application by SBC Communications Inc.,)
Southwestern Bell Telephone Company, and)
Southwestern Bell Communications Services,)
Inc. d/b/a/ Southwestern Bell Long Distance)
for Provision of In-Region, InterLATA)
Services in Texas)

CC Docket No. 00-65

COMMENTS OF
@LINK NETWORKS, INC., BLUESTAR NETWORK SERVICES. INC., DSLNET, INC.,
MGC COMMUNICATIONS, INC., D/B/A MPOWER COMMUNICATIONS CORP., and
WALLER CREEK COMMUNICATIONS, INC. D/B/A PONTIO COMMUNICATIONS
CORPORATION INC.

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Dated: April 26, 2000

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SUMMARY

SBC's supplemental showing is remarkable in that it has submitted performance data that shows in key respects worsening compliance with governing standards. SBC's showing of timely provision of "hot cuts" and nondiscriminatory provision of DSL capable loops continues to fall below acceptable standards. The Department of Justice found that SBC's performance in these areas created an environment that systematically discriminates against CLECs. That continues to be the case.

In addition, this discrimination against CLECs is exacerbated by SBC's Project Pronto. The unavailability of Project Pronto-enabled loops precludes CLECs from providing other forms of DSL other than ADSL service. In addition, SBC has failed to provide any showing that it will be able to provide nondiscriminatory access to Project Pronto-enabled loops to those CLECs that are planning to provide ADSL service. The Commission require SBC to proceed with Project Pronto on a competitively neutral basis before proceeding with further consideration of SBC's application for interLATA authority in Texas.

Accordingly, the Commission should deny SBC's application.

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@Link Networks, Inc., BlueStar Network Services, Inc., DSLnet
Communications, LLC., MGC Communications, Inc., d/b/a Mpower Communications Corp.,
and Waller Creek Communications, Inc. d/b/a Pontio Communications Corporation, Inc. ("Joint
Commenters"), by undersigned counsel and pursuant to the Commission's April 6, 2000 *Public
Notice*, submit these comments concerning the above-captioned application ("Application") of
SBC Communications Inc., Southwestern Bell Telephone Company, and Southwestern Bell
Communications Services, Inc. d/b/a/ Southwestern Bell Long Distance (collectively "SBC") as

supplemented by additional information filed by SBC on April 5, 2000.¹ For the reasons, stated below the Commission should deny SBC's application to offer interLATA service in Texas.

I. SBC IS NOT IN COMPLIANCE WITH THE COMPETITIVE CHECKLIST IN REGARD TO HOT CUTS

To obtain authorization to provide in-region, interLATA services under section 271, the BOC must show, *inter alia*, that it has "fully implemented the competitive checklist" in section 271(c)(2)(B) of the Act.² Section 271(c)(2)(B)(iv) of the Act, item 4 of the competitive checklist, requires that SBC provide "[l]ocal loop transmission from the central office to the customer's premises, unbundled from local switching or other services."³ In order to establish that it is providing unbundled local loops in compliance with section 271(c)(2)(B)(iv), SBC must demonstrate that it currently is meeting its obligation to furnish loops in the quantities that competitors reasonably demand and at an acceptable level of quality.⁴

¹ Comments Requested on the Application by SBC Communications, Inc. For Authorization Under Section 271 of the Communications Act to Provide In-Region, InterLATA Service in the State of Texas, Public Notice, CC Docket No. 00-65, DA 00-750, April 6, 2000.

² 47 U.S.C. § 271(d)(3)(A); *Application by New York Telephone Company (d/b/a Bell Atlantic-New York), Bell Atlantic Communications, Inc., NYNEX Long Distance Company and Bell Atlantic Global Networks, Inc., for authorization to Provide In-Region, InterLATA Services in New York*, Memorandum Opinion and Order, FCC 99-404, released December 22, 1999, para. 18, 44, *appeal pending sub. nom., AT&T v. FCC*, Case No. 99-1538 (D.C. Cir.) ("New York Order").

³ 47 U.S.C. § 271(c)(2)(B)(iv).

⁴ *New York Order*, ¶ 269.

A key manner of provisioning of unbundled loops is through "the use of coordinated conversions of active customers" -- "hot cuts" -- from the BOC to the competing carriers.⁵ This involves manually disconnecting the customer's loop in the BOC's central office and reconnecting the loop at the competing carrier's collocation space.⁶ Since the customer is taken out of service while the hot cut is in progress, it is critical that the hot cut be provisioned correctly and coordinated between the BOC and the competing carrier in order to prevent extended service disruptions for the customer.⁷

SBC attempts to discount the importance of its "hot cut" performance by stating that only 10 to 15 percent of unbundled loops are provisioned using the hot cut process.⁸ However, CLECs cannot, as a practical matter, compete effectively if a significant percentage of prospective customers experience significant losses of service in the hot cut process, or if other coordination problems occur, such as continued billing by the ILEC after service has been cut over. In fact, the Commission recognized the central importance of hot cuts when it noted in the New York Order that:

although we consider Bell Atlantic's demonstrated on-time hot cut performance at rates at or above 90 percent, in combination with

⁵ *New York Order*, ¶ 291.

⁶ *New York Order*, ¶ 291, fn. 925.

⁷ *Id.*

⁸ SBC Letter to Magalie Roman Salas, April 5, 2000 ("SBC April 5 Letter"), p. 8-9.

the evidence indicating that fewer than five percent of hot cuts resulted in service outages and that fewer than two percent of hot cut lines had reported installation troubles, to be sufficient to establish compliance with the competitive checklist, we view this as a minimally acceptably showing.

and

We are especially concerned with hot cut performance because of the substantial risk that an untimely or defective cutover will result in an end-user customer's loss of service for more than a brief period, as well as the effect of such disruptions upon competitors. We also would be particularly concerned if there was any evidence that Bell Atlantic is competing in the market place in part by suggesting to consumers that there is a possibility of service disruptions when customers switch their service from Bell Atlantic to competing carriers.⁹

SBC's performance falls short of these standards. The Department of Justice concluded that "SBC's performance with regard to "hot cuts" is worse than Bell Atlantic's performance in New York, which the Commission concluded was 'minimally acceptable.'"¹⁰ SBC attempts to rectify the initial inadequacies of its data by submitting new data on CHCs and data on FDTs.¹¹ In regard to FDT cut-overs, SBC asserts that it meets the two hour benchmark

⁹ *Bell Atlantic New York Order*, ¶ 309.

¹⁰ United States Department of Justice Evaluation ("DOJ Evaluation"), p. 27.

¹¹ *See SBC Ex Parte Submission*, pp. 9-11. SBC uses two hot cut processes. One is fully coordinated hot cut ("CHC") process which is to be used for conversions of orders of twenty or more lines. These orders are manually processed and require intensive coordination and communication between SBC and the CLEC. Thus, they are performed outside of normal business hours. FDT cuts are used for cuts of fewer than 20 lines and are performed during normal business hours since they be processed without the manual intervention of SBC representatives. *Id.* at 27.

93 percent of the time. For instance, in January 2000, the two hour completion interval was met 95.3 percent of the time, and for February 2000, the two hour interval was met 92.1 percent of the time. The problem, however, is that SBC is required to complete the cutover within two hours 99 percent of the time.¹² Thus, SBC is not close to meeting the benchmark requirements.

SBC admits a "significant departure from the standard set in New York" concerning unexpected SWBT-caused outages for the FDT method.¹³ SBC argues that this doesn't matter because a CLEC that is concerned about possible outages on a particular hot cut can select the CHC method."¹⁴ However, this is not much of a choice, because SBC has been trying to discourage CLECs from using the CHC process and may charge more for it. As the Department of Justice, noted:

[SBC] has encouraged, if not required, CLECs to switch from CHC to FDT for smaller volume loop cuts. SBC has expressed the view that CHC is too resource-intensive to support commercial levels of demand for these lower-loop volume orders and that transition to FDT could alleviate CHC capacity constraints. SBC may charge a premium if CLECs select the intensively manual CHC process. In light of this the use of CHC appears to be rapidly declining, while the use of FDT appears to be rapidly increasing.¹⁵

Accordingly, the availability of the CHC process cannot ameliorate any deficient

¹² Conway/Dysart Affidavit, p. 5.

¹³ SBC April 5 Letter, p. 10.

¹⁴ *Id.*

¹⁵ DOJ Evaluation, p. 28.

performance in FDT hot cuts.

Moreover, the data shows performance that appears to be worsening over time. For example, the premature disconnect for LNP conversions (with Loop) show that three of the four pertinent measures for January and February 2000 exceed the two percent benchmark allowed by the Texas PUC.¹⁶ SBC's performance actually worsened over time as reflected by the fact that in February, 11.2 percent of CHCs were performed prematurely, compared to 0.5 percent in December.¹⁷

The Commission has unequivocally held, as shown *supra*, that the standards it set in the *New York Order* is a "minimally acceptable showing" and that it "would have serious concerns if the level of performance in any of the three measures were to decline" particularly given the importance of hot cuts.¹⁸ Accordingly, the Commission should conclude that SBC's hot cut performance is not sufficient to warrant grant of interLATA authority for Texas.

II. SBC HAS NOT SHOWN THAT IT IS PROVIDING NONDISCRIMINATORY ACCESS TO DSL CAPABLE LOOPS

In its order approving Bell Atlantic's application to offer interLATA service in New York, the Commission stated that future Section 271 applicants must "make a separate and

¹⁶ SBC April 5 Letter, pp. 9-11.

¹⁷ Conway/Dysart Affidavit, p 5.

¹⁸ *Bell Atlantic New York Order*, ¶ 309.

comprehensive evidentiary showing with respect to the provision of xDSL capable loops ..."¹⁹

The Commission provided two ways that future applicants could demonstrate nondiscrimination in provision of xDSL capable loops. First, the Commission provided that establishment of a fully operational separate affiliate for provision of advanced services may provide significant evidence of nondiscrimination.²⁰ Second, the Commission provided that applicants could demonstrate nondiscrimination in the provision of xDSL capable loops by comprehensive and accurate reports of performance measures even without a separate affiliate.²¹ The Commission stated that it had a strong preference for a record that contains data measuring a BOC's performance by state-adopted standards that were developed with input from CLECs.²² SBC has failed to demonstrate that it is providing nondiscriminatory access to DSL capable loops under either of these approaches.

A. SBC Does Not Have a Fully Operational Advanced Services Affiliate

Future Expectations of Operational Status are Insufficient. SBC states that its separate affiliate -- Advanced Solutions, Inc. ("ASI") -- is fully operational. However, there is no description that ASI is actually operating in ways that could demonstrate that SBC is

¹⁹ *New York Order*, para. 330.

²⁰ *Id.*

²¹ *Id.* para. 333-335.

²² *Id.* para. 334.

providing nondiscriminatory provision of xDSL capable loops to ASI and CLECs.²³ Rather, SBC's showing of nondiscrimination is comprised, with some exceptions, of promises that at some point in the future ASI will be operating. We are told that ASI "will" function in nearly every respect like an unaffiliated carrier in the provision of advanced services;²⁴ "will" begin utilizing the same processes available to unaffiliated CLECs beginning with an order of 280 unbundled local loops on April 5, 2000,²⁵ and that on or about May 29, 2000 ASI "will" use the same processes as CLECs to order line sharing.²⁶ The Department of Justice estimates that ASI will not be fully operational until October 2000 at the earliest.²⁷ What is missing is any description of any past, or even current, operations of ASI that would demonstrate that ASI and CLECs obtain services from SBC by the same processes and on the same terms and conditions. SBC's promises of future operations show that ASI is not yet fully operational.

Moreover, to the limited extent that ASI is operating, any such experience has been too recent and too short to warrant any assurances of nondiscrimination. SBC states that ASI voluntarily began submitting applications for collocation arrangements in the same manner

²³ SBC states that it has withdrawn its state and federal tariffs for DSL service and transferred employees to ASI. Supplemental Affidavit of Lincoln Brown, p. 5.

²⁴ Lincoln Brown Affidavit p. 8.

²⁵ *Id.* p. 2.

²⁶ *Id.* p. 2-3.

²⁷ Letter from Department of Justice to Magalie Roman Salas, March 20, 2000, p. 6.

as CLECs on February 29, 2000²⁸ and became the provider of record for new customers on March 24, 2000.²⁹ Apart from the fact that these statements disprove SBC's claim in its January application that ASI was then fully operational, they are simply too recent to constitute sufficient assurance of nondiscrimination against CLECs. What is needed is sustained experience over a considerable length of time showing that in every respect ASI and CLECs are subject to identical processes in obtaining services from SBC in connection with their provision of advanced services. The Commission should require fully operational status for at least one year before concluding that experience with an advanced services affiliate helps demonstrate that a BOC is not discriminating in provision of DSL capable loops.

Compliance With Merger Conditions Does Not Constitute Compliance with
Section 271. SBC contends that it is meeting its obligation to provide reasonable and nondiscriminatory access to DSL capable loops because it established its advanced services affiliate in compliance with conditions imposed by the Commission as part of the approval of the SBC/Ameritech merger.³⁰ However, Section 271 checklist obligations are independent of any

²⁸ *Id.* p. 7.

²⁹ *Id.* p. 6.

³⁰ Joint Commenters call to the Commission's attention the fact that, pursuant to the merger conditions, SBC has recently filed proposed loop conditioning rates in each state in its region. These rates are outrageous ranging up to over \$1,600 for removal of load coils, for example. In contrast, the Texas PUC has imposed interim loop conditioning rates that are about \$40. Joint Commenters submit that SBC's proposed rates are so egregiously unreasonable as to violate the merger conditions.

standards or authority of the Commission to approve mergers. Compliance with the merger conditions is not equivalent to complying with Section 271. Nor does compliance with the merger conditions otherwise show that SBC is providing nondiscriminatory access to DSL capable loops or otherwise not discriminating against CLECs. In fact, the merger conditions specifically authorize SBC to engage in very significant discrimination in provision of services to ASI including provision of line sharing to ASI prior to the time line sharing is available to CLECs, as admitted by SBC.³¹ This specifically violates SBC's obligation under Section 271(c)(2)(B)(ii) of the Act to provide nondiscriminatory access to unbundled network elements. The merger conditions also permit SBC and ASI to engage in joint marketing and certain customer care functions after the sale.³² These circumstances preclude grant of the present application. Accordingly, compliance with the merger conditions is irrelevant to a determination of compliance with Section 271 and, to the extent SBC is complying with these merger conditions, actually guarantees that SBC is discriminating in favor of ASI.

An Advanced Services Affiliate Would Be An Incomplete Remedy In Any Event.

Even assuming that ASI were fully operational and that SBC was not discriminating in favor of ASI in important respects, ASI would not constitute a sufficient safeguard against discrimination because ASI will not offer all of the advanced services that CLECs offer. ASI will not offer

³¹ Lincoln Brown Affidavit pp. 6, 8.

³² *Id.* p. 9.

retail ISDN and DS1 services which are very similar to the IDSL and SDSL services, respectively, that CLECs offer. CLECs will require services from SBC in order to provide IDSL and SDSL that ASI will not be ordering. Thus, a fully operational separate affiliate would not offer assurances of nondiscrimination in provision of the unbundled loops that CLECs need to offer IDSL and SDSL services.

For the foregoing reasons, the Commission should give no weight to SBC's advanced services affiliate in determining whether SBC is providing nondiscriminatory access to DSL capable loops. The Commission must rely on SBC's compliance with performance standards, which, as discussed herein, SBC continues to fail to meet, in order to determine whether SBC is providing nondiscriminatory access to DSL capable loops.

B. SBC Is Not Meeting Performance Standards in Provisioning DSL Capable Loops

The Department of Justice concluded that the performance reports concerning SBC's provisioning of DSL capable loops submitted with its initial application:

shows a service environment in which CLECs attempting to compete against SBC's retail DSL services are seriously disadvantaged at present by SBC's inadequate wholesale performance, and may well face greater disadvantages in the future if SBC's performance continues to decline in the face of higher volumes of CLEC orders.³³

SBC's supplemental showing fails to provide any assurance that the situation has

³³ DOJ Evaluation, p. 23.

changed so that DSL providers will not continue to be seriously disadvantaged in Texas.

Indeed, SBC's supplemental showing is remarkable in continuing to show deficient performance.

PM 55.1 (Average Provisioning Intervals). SBC states that its average provisioning intervals for DSL capable loops have been in parity for 8 of 11 monthly reports.³⁴ In other words, SBC fails to provide parity to CLECs in terms of average provisioning intervals nearly one third of the time.

PMs 65-08, 67-08, and 69-08 (Maintenance and Repair). Of these reports, SBC was not in parity for 2 of the last 6 months from September 1999 to February 2000 for PM 65-08 (Trouble Report Rate).³⁵ SBC attempts to discount this poor performance -- CLECs received inferior quality service one third of the time -- by contending that CLECs average DSL loop trouble report rate over the last 6 months was 5.5 for CLECs versus 5.6 for SBC's retail customers in Texas.³⁶ However, this performance standard is not an average trouble report rate measured over six months, and for good reason. It is possible to have an average trouble over a six month period while providing very poor service one third of the time or more. This would seriously affect CLECs' ability to compete. Adequate performance requires consistent parity

³⁴ SBC April 5 Letter, p. 12.

³⁵ Chapman Dysart Affidavit p. 15.

³⁶ *Id.*

each month. SBC fails that test for PM 65-08. Similarly, SBC flunks under PM 67-08 (Mean Time to Restore - Dispatch) because it shows parity only 3 out of the last four months. In approving the Bell Atlantic New York Application, the Commission stated that it would expect a BOCs to demonstrate that it performs maintenance and repair in substantially the same time and manner as for its own retail lines.³⁷ SBC has not met that standard here.

PMs 58-09, 60-08, 60-21, 60-34, 61-08, 62-09, 63-09 (Missed Installation Dates).

SBC was out of parity for four of these measure every month in the last six months, and for the other measures was in parity at least some of the time. SBC offers a number of excuses as to why the Commission should nonetheless conclude that this poor performance does not disadvantage competing providers of DSL service. It claims that as a general matter these performance measures require an "apples to oranges" comparison because SBC provides DSL service through line sharing whereas competing providers, until they can obtain line sharing, later this year must order separate unbundled loops.³⁸ SBC claims that it misses due dates for CLECs in many cases because CLECs must obtain a separate loop to provide DSL service but that loops are sometimes unavailable immediately or need repair - which it refers to as "lack of facilities." However, it says that this "lack of facilities" does not happen to SBC's retail

³⁷ *New York Order*, para. 335.

³⁸ Chapman/Dysart Affidavit, p. 17.

operations because SBC provides service through line sharing (which is not yet available to CLECs) which is provided over existing loops. SBC contends that this causes unfair performance results for SBC in terms of missed due dates.³⁹

This argument perversely attempts to blame SBC's own poor performance in terms of missed due dates on its own discrimination against CLECs in provision of line sharing. Further, if SBC is not able to present performance data that make sense until line sharing is implemented, the Commission should reject the application on the basis of the present poor showing on missed due dates and direct SBC not to file again until it has implemented line sharing.

In addition, SBC's "lack of facilities" argument has already been found unpersuasive by the Department of Justice. The Department of Justice recommended that the Commission reject this argument because even after line sharing is implemented, CLECs will continue to need unbundled loops for DSL services, including SDSL, that are not able to be provided through line sharing with analog voice services.⁴⁰ SBC has not provided an explanation of why it did not raise the "lack of facilities" issue either before the Texas PUC when performance measures were being developed or in its initial application. In reality, the "lack of facilities" argument is a belated and ineffectual attempt to justify its discrimination against

³⁹ *Id.*, pp 18-21.

⁴⁰ DOJ March 20, 2000 letter, p. 4.

CLECs.

Since SBC's data shows that it missed 15.5% of its due dates for DSL loops, while it only missed 5.1 percent of its retail customer due dates for DS1 service, it appears that SBC is engaging in significant discrimination against CLECs in provision of advanced services.⁴¹ Accordingly, SBC's performance concerning missed due dates does not show that it is providing nondiscriminatory access to DSL capable loops.

PM 59-08 (Percent Trouble Reports Within 30 Days). In order to qualify for Section 271 approval, a BOC must show that the quality of loops provisioned to CLECs is substantially the same for the BOC's provision of its own retail advanced services or that the level of quality is sufficiently high to permit CLECs a meaningful opportunity to compete.⁴² SBC reports that under PM 59-08 it failed to achieve parity in three of six months from September 1999 to February 2000.⁴³ SBC blames this dismal performance on CLECs. It claims that CLECs are choosing to test the limits of technology and, therefore, experience a failure rate that is generally higher than that experienced when operating within the recognized parameters established by the industry.⁴⁴

⁴¹ *Id.* p. 5 citing SBC January Performance Data at 271-No58b (DS1) to 58c (DSL).

⁴² *New York Order*, para. 335.

⁴³ Chapman/Dysart Affidavit, p. 22.

⁴⁴ *Id.*

The Commission should reject this argument. CLECs are not errant players in the telecommunications industry subjecting ILEC facilities to radically new uses outside of normal industry parameters. CLECs do not have the luxury of attempting to build commercial success on the basis of untested technologies. The equipment and services they deploy have been fully tested in real world situations. SBC has provided no evidence supporting its claim that it is the technology that CLECs use that is causing trouble reports on CLEC lines. Accordingly, CLECs are not to blame for SBC's failure to meet parity in quality of loops provided to CLECs. Instead, SBC is systematically discriminating against CLECs in terms of the quality of loops that it provides to them. This factor alone disqualifies SBC from receiving 271 approval for Texas on the basis of the current application.

BRI Loops. The Department of Justice concluded that SBC's performance in provision of ISDN BRI loops, which CLECs use in some cases to provision IDSL service, demonstrates substantial discrimination against CLECs that creates a service environment in which CLECs attempting to compete against SBC's retail DSL services are seriously disadvantaged, and may face greater problems in the future if SBC's performance continues to decline in the face of higher volumes of CLEC orders.⁴⁵ In its supplemental filing, SBC admits that it continues to be out of parity for performance measures for provision of BRI loops,⁴⁶ but

⁴⁵ DOJ Evaluation pp., 21, 23.

⁴⁶ Chapman/Dysart Affidavit, p. 24. Based on SBC's February 1, 2000 *ex parte*, it appears that SBC's performance significantly worsened after the Texas PUC evaluated SBC's

offers a number of excuses that it claims should cause the Commission to disregard its failure to meet the applicable performance measures.

SBC contends that the benchmark defining PM 56-03 is "unreasonably ambitious."⁴⁷ Similarly, it contends that it will miss due dates for installation of BRI loops to CLECs because the installation interval is too short in that it does not take into account the availability of technicians and facilities.⁴⁸ Again, it contends that it is out of parity in provision of quality of BRI loops because the performance measure does not provide SBC sufficient time to design and test BRI loops.⁴⁹ As with its other attempts to explain away its inadequate performance, SBC has failed to explain why it did not bring up these issues earlier, or if it did, they appear to be no more than disagreement with the performance measures themselves. If SBC disagrees with these performance measures it should withdraw its application, attempt to get the Texas PUC to change them, and then resubmit its application.

It is not the Commission's job to recraft state-approved 271 performance measures, even if SBC's concerns about them had merit. The Commission need only determine whether SBC is meeting them - which it is not. The Department of Justice has stated that this

missed due dates for BRI ISDN loops. (PM 58). SBC delivered 23.3% of CLEC BRI ISDN loops late in December 1999 compared to 15.5% in November 1999.

⁴⁷ *Id.* p. 25.

⁴⁸ *Id.* p. 26.

⁴⁹ *Id.* p. 27.

causes substantial discrimination against CLECs. Joint Commenters are frankly amazed that SBC has requested further consideration of its application when SBC has not provided any indication of improved performance but merely provides belated excuses.

III. SBC HAS NOT IMPLEMENTED ACCESS TO LOOP PREQUALIFICATION INFORMATION

The *UNE Remand Order* required ILECs as part of the OSS pre-ordering process, to provide CLECs with nondiscriminatory access to the same detailed information about the loop that is available to the incumbent, so that the CLEC can make an independent judgment about whether the loop is capable of supporting the advanced services equipment the CLEC intends to install.⁵⁰ This obligation becomes effective May 17, 2000. SBC's supplemental showing offers to amend interconnection agreements with proposed language and to negotiate or arbitrate if a CLEC doesn't like the proposed language.⁵¹ It also generally describes the information that it will provide.⁵²

However, SBC has not established or proposed any performance metrics for this requirement. In addition, according to the Texas PUC, SBC provides "loop make-up information

⁵⁰ *UNE Remand Order*, para. 427. Loop qualification information identifies the physical attributes of the loop plant (such as loop length, the presence of analog load coils and bridge taps, and the presence and type of digital loop carrier systems) that enable carriers to determine whether the loop is capable of supporting DSL and other advanced services. *Id.* para. 426.

⁵¹ Auinbauh Affidavit p. 10.

⁵² Cruz Affidavit p. 17.

as a pre-order function on a manual basis."⁵³ SBC has presented no information that it will be able to scale up provision of loop prequalification information as volumes of requests increase. Furthermore, the Commission has already determined that the database used by SBC to provide loop qualification information would not meet the nondiscrimination requirement because it "indicates only whether a loop falls into a 'green, yellow, or red' category" and does not provide access to the underlying loop information.⁵⁴ SBC has not demonstrated that it will be able to provide access to the required underlying loop information by May 17, 2000.

Since access to loop prequalification information is critical to CLECs' ability to compete successfully, the Commission should require a substantially stronger showing of the loop prequalification information requirement of the *UNE Remand Order* before granting SBC interLATA authority for Texas. The Commission should consider prohibiting SBC from providing DSL services until it provides an adequate demonstration of being able to provide nondiscriminatory access to loops, a step recently taken by the Wisconsin Public Service Commission.⁵⁵

⁵³ Texas PUC Evaluation p. 33.

⁵⁴ *UNE Remand Order*, para. 428.

⁵⁵ *Investigation of the Digital Services and Facilities of Wisconsin Bell, Inc.*, 6720-TI-154/7825-TI-100, Final Decision and Certificate, p. 24.

IV. PROJECT PRONTO EXACERBATES DISCRIMINATION IN PROVISION OF DSL CAPABLE LOOPS

"Project Pronto" is SBC's initiative for a rapid rollout of ADSL service throughout its region. This initiative involves installation of fiber to as many as 20,000⁵⁶ remote terminals which will serve up to 50% of lines in SBC territory.⁵⁷ The technology which SBC plans to deploy is proprietary to a specific manufacturer and is not compatible with "flavors" of DSL other than ADSL.⁵⁸ This means that CLECs that do not plan to offer ADSL will not be able to use Project Pronto enabled loops to offer their service and will be effectively locked out of the market.

Joint Commenters believe that Project Pronto is inherently anticompetitive. CLECs have argued in connection with Project Pronto that ILECs should not be able to unilaterally make decisions concerning introduction of new technologies into bottleneck loop facilities precisely because those decisions can directly affect competition.⁵⁹ In the case of Project Pronto, SBC will be able to effectively thwart throughout its region provision of different -- and better -- DSL services than ADSL.

⁵⁶ Letter from SBC to Lawrence E. Strickling, CC Docket No. 98-141, p. 3.

⁵⁷ Mpower Comments, CC Docket No. 98-141, filed March 3, 2000, p 3.

⁵⁸ *Id.* p. 2.

⁵⁹ DSL Access Telecommunications Alliance, CC Docket No. 98-141, filed March 10, 2000.

At a minimum, Project Pronto increases the vulnerability of CLECs to the forms of institutional discrimination against them - such as discrimination in terms of missed due dates and quality of loops - that are represented by SBC's failure to meet performance standards for provision of DSL capable loops and BRI ISDN loops. While SBC plunges ahead with deployment of Project Pronto to as many of 50% of loops in its region, CLECs that do not provide ADSL are not able to compete at all for customers served by those loops and experience substantial discrimination in their ability to provide service even for the remaining loops that are capable of non-ADSL service. Moreover, CLECs that are planning to provide ADSL service will also be harmed by Project Pronto. SBC has not explained how it will be able to provide nondiscriminatory access to Project Pronto-enabled loops nor is there any basis to believe that SBC's OSS and other provisioning systems are adequate to provide such nondiscriminatory access given its poor performance as described elsewhere in this pleading. Accordingly, at a minimum, before considering Section 271 issues, the Commission should evaluate whether SBC has achieved nondiscrimination in the provision of DSL capable loops in light of the fact that CLECs are already at a substantial competitive disadvantage due to Project Pronto and will be especially sensitive to the impact of discrimination in provision of loops over which they are able to provide service.

The Commission should go a step further, however. Allowing Project Pronto to go forward as presently planned will substantially limit the ability of CLECs to provide DSL

services in Texas by discrimination in provision of network elements against providers of non-ADSL services, *i.e.* non-ADSL providers will be unable to access loops to provide these services. Project Pronto, therefore, violates checklist item numbers 2 and 4 that require BOCs to provide nondiscriminatory access to network elements and local loop transmission from the central office to the customer's premises.⁶⁰ Accordingly, the Commission should not grant SBC interLATA authority until SBC has developed a plan for eliminating the anticompetitive impacts of Project Pronto and that permits nondiscriminatory access to Project Pronto-enabled loops.

In fact, several technical solutions are available that would permit SBC to move forward with Project Pronto on a competitively neutral basis. For example, SBC could offer an OC3, DS3, or n x T1 facilities at UNE prices between the central office and a CLEC DSLAM at the remote terminal.⁶¹ This would bypass the proprietary ADSL-only technology that SBC plans to deploy. SBC must also assure sufficient collocation space at remote pedestals. Absent these measures, Project Pronto would turn back the clock on provision of competitive DSL services in Texas and throughout SBC's region.

VI. SBC HAS UNLAWFULLY DENIED INTERCONNECTION TO PONTIO

Pontio additionally calls to the Commission's attention SBC's unlawful refusal to provide interconnection pursuant to Pontio to the rates terms and conditions specified in the current

⁶⁰ 47 U.S.C. Sections 271(c)(2)(B)(ii) and (iii).

⁶¹ See Letter from Mpower to Magalie Roman Salas, CC Docket No. 98-141, March 17, 2000.


SBC/Pontio interconnection agreement for Texas. Pursuant to that agreement, SBC is obligated to provide ISDN interconnection to Pontio at the rates specified therein. These rates were imposed in an arbitration by the Texas PUC in summer 1998. In particular, SBC will not provide the requested interconnection trunks unless Pontio agrees to an amended interconnection agreement that would impose per minute local switching charges. Recently, SBC has made the incredible claim that it cannot provide the requested ISDN Interconnection trunks because it does not have the internal processes in place to provision them -- even though they agree that such interconnection has otherwise been available as a tariffed service for years.

SBC's refusal to interconnect is a classic instance of its attempt to use its market power over local loop facilities as a tool for achieving concessions from CLECs. In this instance, it is also an attempt to evade an arbitrated decision of the Texas PUC. SBC's refusal to provide interconnection pursuant to its interconnection agreement with Pontio is unlawful, violates item one of the competitive checklist, and disqualifies SBC from receiving interLATA authority for Texas.

VII. CONCLUSION

For the foregoing reasons, the Commission should deny the SWBT Application.

Respectfully submitted,



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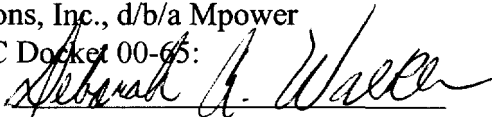
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CERTIFICATE OF SERVICE

I, Deborah A. Walker, hereby certify that on April 26, 2000, I caused to be served upon the following individuals the Comments of @Link Networks, Inc., BlueStar Network Services, Inc., DSLnet Communications, LLC., MGC Communications, Inc., d/b/a Mpower Communications Corp., and Pontio Communications in CC Docket 00-65:


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